

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MARK FREDERICK DURBIN,

11 Plaintiff,

v.

12 STATE OF WASHINGTON, *et al.*,

13 Defendants.

14 CASE NO. C23-0973-JCC

ORDER

15 This matter comes before the Court on Plaintiff's motion for reconsideration (Dkt. No.
16 40) of the Court's order granting in part and denying in part various motions to dismiss (Dkt.
17 Nos. 17, 18, 24). Having thoroughly considered the briefing and the relevant record, the Court
18 DENIES Plaintiff's motion for the reasons explained herein.

19 A motion for reconsideration is generally disfavored. LCR 7(h)(1). It is only appropriate
20 where there is "manifest error in the prior ruling or a showing of new facts or legal authority
21 which could not have been brought to [the Court's] attention earlier with reasonable diligence."
22 *Id.* As this Court has frequently indicated, reconsideration should not be used to ask it to "rethink
23 what it had already thought through—rightly or wrongly." *Wilcox v. Hamilton Constr., LLC*, 426
24 F. Supp. 3d 788, 791 (W.D. Wash. 2019) (cleaned up); *see, e.g., Brown v. Murphy*, 2023 WL
25 6481566, slip op. at 1 (W.D. Wash. 2023); *Hoffman v. Transworld Sys. Inc.*, 2019 WL 109437,
26 slip op. at 1 (W.D. Wash. 2019).

Here, Plaintiff fails to demonstrate either manifest error or new facts or legal authority that would allow his claims against Defendants the State of Washington, Dick's Towing, Inc., or John Comstock to continue. As to the § 1983 claim against the State of Washington: The Court remains convinced that it lacks jurisdiction to consider them, given the State's Eleventh Amendment immunity. (See Dkt. No. 36 at 2–3.) Plaintiff's regurgitation of prior arguments suggesting otherwise does not change this result. (See Dkt. No. 40 at 2–5.) Nor do Plaintiff's new legal citations—the cases are simply inapt and do not stand for the proposition Plaintiff asserts they do. (See Dkt. Nos. 47 at 3–5, 52 at 2–3.) Similarly, as to the § 1983 claims against Defendants Dicks Towing, Inc. and John Comstock: Plaintiff presents no compelling argument to suggest that the Court erred in finding these claims legally infirm. (See Dkt. Nos. 36 at 3, 40 at 5–6, 53 at 2–3, 54 at 2–3.) This is because Plaintiff's complaint fails to establish that they acted under the color of state law. (See generally Dkt. No. 1.) And as the Court previously indicated, without this jurisdictional anchor, there is no basis for the Court to consider any state law claims against these defendants. (See Dkt. No. 36 at 3–4.)

Thus, Plaintiff fails to demonstrate that the Court committed manifest error or provide the Court with new facts or legal authority that would alter the prior ruling. *See* LCR 7(h)(1). For this reason, Plaintiff's motion for reconsideration (Dkt. No. 40) is DENIED.

DATED this 30th day of October 2023.

John C. Coykendall

John C. Coughenour
UNITED STATES DISTRICT JUDGE